

COMMENTARY

# The Florida Fiduciary Access to Digital Assets Act Gave Me a To-Do List

The FFUADAA was designed to provide fiduciaries legal access to digital accounts and devices within scope of their fiduciary duties, without concerns for unauthorized access or impersonating the user, while giving the digital custodians assurances that they were not violating privacy laws in providing access or information to the user's fiduciary.

By Jennifer L. Fulton | June 06, 2024 at 12:14 PM

---

When I started researching Chapter 740, Florida Statutes, the Florida Fiduciary Access to Digital Assets Act (FFUADAA), it was an academic pursuit. I came away, however, with a personal to-do list that I recommend for everyone.

The FFUADAA was designed to provide fiduciaries legal access to digital accounts and devices within scope of their fiduciary duties, without concerns for unauthorized access or impersonating the user, while giving the digital custodians assurances that they were not violating privacy laws in providing access or information to the user's fiduciary.

Historically, federal laws like the Stored Communications Act, and state counterparts, established a user's privacy rights to their digital communications, and made it a crime for digital custodians to disclose the content of digitally stored communications to third parties not expressly authorized by the user. The act also addressed access to noncontent record of a communication (also called a "catalog of electronic communications"), including date and time of a

communication, and the sender and recipient email addresses, when appropriate.

Similarly, the federal Computer Fraud and Abuse Act and the Electronic Communications Privacy Act, and their state counterparts prohibit unauthorized access or damage to computers (and other digital devices) and stored data, and are intended to prevent hacking, illegal wiretapping, espionage and fraud.

Each custodian created terms of service agreements (TOSAs) that included terms limiting the user from permitting unauthorized use, and sometimes terminating an account upon death, to avoid prosecution for violating the privacy of the user.

All of the above left a fiduciary—such as an agent under a power of attorney, a personal representative of a decedent’s estate, a trustee of a settlor’s trust, or a guardian of a ward—caught between seeking information that helps track down assets and liabilities in furtherance of their fiduciary duties, and potentially obtaining unauthorized access when using the user’s passwords to enter a digital account or reviewing the content of a user’s emails. The FFUADAA solves some of these issues.

The FFUADAA provides a framework for permitting the user to name a “designated recipient” with priority over a fiduciary to access the user’s digital accounts, using an “online tool” with the custodian; outlining requirements for the different kinds of fiduciaries to have varying degrees of access to the user’s digital assets and communications; providing protections against unauthorized access concerns to fiduciaries acting within the scope of their fiduciary duties; permitting fiduciaries with powers over tangible personal property to access digital

devices not held by a custodian; and outlining the timing and options by which a custodian may provide requested data.

Practically speaking, this gives a fiduciary with express user consent, unless superseded by a designated recipient, the ability to seek passwords and review content of emails to locate and manage digital assets.

The starting point for preparing for your loved one to have access to your digital assets in the event something happens to you is to name them in your estate planning documents, using language that gives express consent for fiduciary access to digital assets.

Nonetheless, the fiduciary may still experience challenges. For example, the custodian can require the fiduciary to provide a unique identifier such as an account number, before the custodian releases information. If the fiduciary doesn't have this, it creates a barrier to obtaining the account information. Sometimes an additional court order is necessary.

Help your fiduciaries to help you. Keep an inventory of your own account numbers and digital accounts, providing the custodian's name, account number, the user name and password. Include instructions for each account. For example, do you want to close your Facebook account, or keep it as an in memoriam account? Store the inventory in a safe location. Store a physical inventory in a safe deposit box. Accounts and passwords change often, so a digital inventory may be more practical. Store your digital inventory in an secure online vault that provides access to a designated recipient (ideally, the same fiduciary to whom you give express consent in your estate planning documents).

Second, use an online password manager can keep track of your passwords. Most allow you to designate someone to have access if needed. Some include digital document vault storage, as recommended above. In addition to your inventory, consider storing medical records, insurance documents, tax returns and copies of your estate-planning documents.

Lastly, your fiduciary may encounter dual-factor authentication. They may need access to your cellphone or email or a digital key after providing their password to access your digital accounts. Most email and cellphone providers now have a way to create legacy access (the “online tools” discussed in the act). I just added my children as my iPhone legacy users. Apple sent a QR Code that my kids can use if I die, to access my cellphone. That’s another item to store in the digital vault. Use these online tools, but be prepared to change them if your fiduciary changes.

We all have dozens, if not hundreds of digital accounts and devices we use in daily life. Take the time to do these three steps, and your fiduciaries will thank you for it later.

**Jennifer L. Fulton** *is an attorney of counsel in the Boca Raton office of Schwartz Sladkus Reich Greenberg Atlas (SSRGA Law), focusing on estate planning, probate, and estate and trust administration.*

---

**NOT FOR REPRINT**

© 2024 ALM Global, LLC, All Rights Reserved. Request academic re-use from [www.copyright.com](http://www.copyright.com). All other uses, submit a request to [asset-and-logo-licensing@alm.com](mailto:asset-and-logo-licensing@alm.com). For more information visit [Asset & Logo Licensing](#).